

109TH CONGRESS  
1ST SESSION

# S. 387

To amend the Internal Revenue Code of 1986 to provide tax incentives for the investment in greenhouse gas intensity reduction projects, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2005

Mr. HAGEL (for himself, Mr. ALEXANDER, Mr. CRAIG, and Mrs. DOLE) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide tax incentives for the investment in greenhouse gas intensity reduction projects, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; AMENDMENT OF CODE.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Climate Change Technology Tax Incentives Act of  
6       2005”.

7       (b) AMENDMENT OF CODE.—Except as otherwise ex-  
8       pressly provided, whenever in this Act an amendment or  
9       repeal is expressed in terms of an amendment to, or repeal

1 of, a section or other provision, the reference shall be con-  
 2 sidered to be made to a section or other provision of the  
 3 Internal Revenue Code of 1986.

4 **TITLE I—GREENHOUSE GAS IN-**  
 5 **TENSITY REDUCTION TAX IN-**  
 6 **CENTIVES**

7 **SEC. 101. GREENHOUSE GAS INTENSITY REDUCTION IN-**  
 8 **VESTMENT TAX CREDIT.**

9 (a) IN GENERAL.—Subpart D of part IV of sub-  
 10 chapter A of chapter 1 (relating to business-related cred-  
 11 its) is amended by adding at the end the following new  
 12 section:

13 **“SEC. 45J. GREENHOUSE GAS INTENSITY REDUCTION IN-**  
 14 **VESTMENT CREDIT.**

15 “(a) ALLOWANCE OF CREDIT.—

16 “(1) IN GENERAL.—For purposes of section 38,  
 17 in the case of a taxpayer’s investment in a green-  
 18 house gas intensity reduction project approved by  
 19 the accreditation panel, the greenhouse gas intensity  
 20 reduction investment credit determined under this  
 21 section for the taxable year is an amount equal to—

22 “(A) percentage reduction in greenhouse  
 23 gas intensity certified for such project for such  
 24 year by the accreditation panel, multiplied by

1                   “(B) the investment in such project during  
 2                   such year which is attributable, directly or indi-  
 3                   rectly, to the taxpayer, as determined by the ac-  
 4                   creditation panel.

5                   “(2) AGGREGATE DOLLAR LIMITATION.—The  
 6                   credit determined under paragraph (1) for any tax-  
 7                   able year, when added to any credit allowed to the  
 8                   taxpayer with respect to the such project in any pre-  
 9                   ceding taxable year, shall not exceed 50 percent of  
 10                  the investment attributable to the taxpayer with re-  
 11                  spect to such project through such taxable year.

12                  “(b) LIMITATION ON AGGREGATE CREDIT ALLOW-  
 13                  ABLE.—

14                   “(1) IN GENERAL.—The amount of the green-  
 15                   house gas intensity reduction investment credit de-  
 16                   termined under subsection (a) for any project, when  
 17                   added to all such credits allowed to all taxpayers  
 18                   with respect to the such project shall not exceed the  
 19                   credit dollar amount allocated to such project under  
 20                   this subsection by the accreditation panel from the  
 21                   greenhouse gas intensity reduction investment credit  
 22                   limitation for the calendar year in which such alloca-  
 23                   tion is made.

24                   “(2) TIME FOR MAKING ALLOCATION.—An allo-  
 25                   cation shall be taken into account under paragraph

1 (1) only if it is made not later than the close of the  
 2 calendar year in which the greenhouse gas intensity  
 3 reduction project proposal with respect to such  
 4 project is approved by the accreditation panel.

5 “(3) OVERALL LIMITATION ON AGGREGATE  
 6 CREDIT ALLOWABLE.—The accreditation panel may  
 7 allocate the aggregate credit dollar amount to any  
 8 such project for a period not to exceed a 10-year pe-  
 9 riod beginning with the calendar year described in  
 10 paragraph (2).

11 “(c) LIMITATION ON AMOUNT OF CREDITS ALLO-  
 12 CATED.—

13 “(1) IN GENERAL.—There is a greenhouse gas  
 14 intensity reduction investment credit limitation  
 15 amount for each calendar year. Such limitation  
 16 amount is—

17 “(A) \$245,000,000 for 2006,

18 “(B) \$224,000,000 for 2007,

19 “(C) \$216,000,000 for 2008,

20 “(D) \$103,000,000 for 2009,

21 “(E) \$27,000,000 for 2010, and

22 “(F) except as provided in paragraph (2),  
 23 zero thereafter.

24 “(2) CARRYOVER OF UNUSED ISSUANCE LIMI-  
 25 TATION.—If for any calendar year the limitation

1 amount imposed by paragraph (1) exceeds the  
 2 amount of greenhouse gas intensity reduction invest-  
 3 ment credits allocated during such year, such excess  
 4 shall be carried forward to the succeeding calendar  
 5 year as an addition to the limitation imposed by  
 6 paragraph (1).

7 “(d) GREENHOUSE GAS INTENSITY REDUCTION  
 8 PROJECT; GREENHOUSE GAS INTENSITY; ACCREDITA-  
 9 TION PANEL.—For purposes of this section—

10 “(1) GREENHOUSE GAS INTENSITY REDUCTION  
 11 PROJECT.—The term ‘greenhouse gas intensity re-  
 12 duction project’ means any project approved under  
 13 this section by the accreditation panel. Such ap-  
 14 proval shall be based on the following criteria:

15 “(A) The extent of the reduction in green-  
 16 house gas intensity proposed for the project.

17 “(B) Improvements in system efficiency.

18 “(C) In the case of projects located outside  
 19 the United States, the extent of technology  
 20 transfer.

21 “(D) The existence and nature of agree-  
 22 ments for sharing project benefits and liability  
 23 between the taxpayer and any host government.

24 “(2) GREENHOUSE GAS INTENSITY.—The  
 25 greenhouse gas intensity for any period is equal to

1 the volume of emissions divided by the economic ac-  
 2 tivity associated with a project.

3 “(3) ACCREDITATION PANEL.—The term ‘ac-  
 4 creditation panel’ means a panel certified by the  
 5 Secretary of Commerce.

6 “(e) RECAPTURE OF CREDIT IN CERTAIN CASES.—

7 “(1) IN GENERAL.—If, at any time during the  
 8 20-year period of a greenhouse gas intensity reduc-  
 9 tion project, there is a recapture event with respect  
 10 to such project, then the tax imposed by this chapter  
 11 for the taxable year in which such event occurs shall  
 12 be increased by the credit recapture amount.

13 “(2) CREDIT RECAPTURE AMOUNT.—For pur-  
 14 poses of paragraph (1)—

15 “(A) IN GENERAL.—The credit recapture  
 16 amount is an amount equal to the recapture  
 17 percentage of all greenhouse gas intensity re-  
 18 duction investment credits previously allowable  
 19 to a taxpayer with respect to any investment in  
 20 such project that is attributable to such tax-  
 21 payer.

22 “(B) RECAPTURE PERCENTAGE.—The re-  
 23 capture percentage shall be 100 percent if the  
 24 recapture event occurs during the first 5 years  
 25 of the project, 75 percent if the recapture event

occurs during the second 5 years of the project, 50 percent if the recapture event occurs during the third 5 years of the project, 25 percent if the recapture event occurs during the fourth 5 years of the project, and 0 percent if the recapture event occurs at any time after the 20th year of the project.

“(3) RECAPTURE EVENT.—For purposes of paragraph (1), there is a recapture event with respect to a greenhouse gas intensity reduction project if—

“(A) the taxpayer violates a term or condition of the approval of the project by the accreditation panel at any time,

“(B) the taxpayer adopts a practice which the accreditation panel has specified in its approval of the project as a practice which would tend to defeat the purposes of the program, or

“(C) the taxpayer disposes of any ownership interest arising out of its investment that the accreditation panel has determined is attributable to the project, unless the accreditation panel determines that such disposition will not have any adverse effect on the greenhouse gas intensity reduction project.

1 If an event which otherwise would be a recapture  
 2 event is outside the control of the taxpayer, as deter-  
 3 mined by the accreditation panel, such event shall  
 4 not be treated as a recapture event with respect to  
 5 such taxpayer.

6 “(4) SPECIAL RULES.—

7 “(A) TAX BENEFIT RULE.—The tax for  
 8 the taxable year shall be increased under para-  
 9 graph (1) only with respect to credits allowed  
 10 by reason of this section which were used to re-  
 11 duce tax liability. In the case of credits not so  
 12 used to reduce tax liability, the carryforwards  
 13 and carrybacks under section 39 shall be appro-  
 14 priately adjusted.

15 “(B) NO CREDITS AGAINST TAX.—Any in-  
 16 crease in tax under this subsection shall not be  
 17 treated as a tax imposed by this chapter for  
 18 purposes of determining the amount of any  
 19 credit under this chapter or for purposes of sec-  
 20 tion 55.

21 “(f) DISALLOWANCE OF DOUBLE BENEFIT.—

22 “(1) BASIS REDUCTION.—The basis of any in-  
 23 vestment in a greenhouse gas intensity reduction  
 24 project shall be reduced by the amount of any credit



1       determined under this section with respect to such  
2       investment.

3               “(2) CHARITABLE DEDUCTION DISALLOWED.—

4       No deduction shall be allowed to a taxpayer under  
5       section 170 with respect to any contribution which  
6       the accreditation panel certifies to the Secretary con-  
7       stitutes an investment in a greenhouse gas intensity  
8       reduction project that is attributable to such tax-  
9       payer.

10       “(g) CERTIFICATION TO SECRETARY.—The accredi-  
11      tation panel shall certify to the Secretary before January  
12      31 of each year with respect to each taxpayer which has  
13      made an investment in a greenhouse gas intensity reduc-  
14      tion project—

15               “(1) the amount of the greenhouse gas intensity  
16      reduction investment credit allowable to such tax-  
17      payer for the preceding calendar year,

18               “(2) whether a recapture event occurred with  
19      respect to such taxpayer during the preceding cal-  
20      endar year, and

21               “(3) the credit recapture amount, if any, with  
22      respect to such taxpayer for the preceding calendar  
23      year.

1       “(h) REGULATIONS.—The Secretary shall prescribe  
 2 such regulations as may be appropriate to carry out this  
 3 section, including regulations—

4           “(1) which limit the credit for investments  
 5 which are directly or indirectly subsidized by other  
 6 Federal benefits,

7           “(2) which prevent the abuse of the provisions  
 8 of this section through the use of related parties,  
 9 and

10          “(3) which impose appropriate reporting re-  
 11 quirements.”.

12       (b) CREDIT MADE PART OF GENERAL BUSINESS  
 13 CREDIT.—Subsection (b) of section 38 is amended by  
 14 striking “plus” at the end of paragraph (18), by striking  
 15 the period at the end of paragraph (19) and inserting “,  
 16 plus”, and by adding at the end the following new para-  
 17 graph:

18           “(20) the greenhouse gas intensity reduction in-  
 19 vestment credit determined under section 45J(a).”.

20       (c) DEDUCTION FOR UNUSED CREDIT.—Subsection  
 21 (c) of section 196 is amended by striking “and” at the  
 22 end of paragraph (11), by striking the period at the end  
 23 of paragraph (12) and inserting “, and”, and by adding  
 24 at the end the following new paragraph:

1           “(13) the greenhouse gas intensity reduction in-  
2           vestment credit determined under section 45J(a).”.

3           (d) CLERICAL AMENDMENT.—The table of sections  
4 for subpart D of part IV of subchapter A of chapter 1  
5 is amended by adding at the end the following new item:

“Sec. 45J. Greenhouse gas intensity reduction investment credit.”.

6           (e) EFFECTIVE DATE.—The amendments made by  
7 this section shall apply to investments made after Decem-  
8 ber 31, 2005.

## 9       **TITLE II—ENERGY EFFICIENCY** 10           **PROVISIONS**

### 11       **Subtitle A—Renewable Energy**

#### 12       **SEC. 201. SENSE OF THE SENATE REGARDING EXTENSION** 13           **OF RENEWABLE ENERGY CREDIT.**

14           It is the sense of the Senate that the income tax cred-  
15 it for electricity produced from certain renewable re-  
16 sources under section 45 of the Internal Revenue Code  
17 of 1986 should be extended through 2010.

1     **Subtitle B—Clean Coal Incentives**  
 2     **PART I—CREDIT FOR EMISSION REDUCTIONS**  
 3         **AND EFFICIENCY IMPROVEMENTS IN EXIST-**  
 4         **ING COAL-BASED ELECTRICITY GENERATION**  
 5         **FACILITIES**

6     **SEC. 211. CREDIT FOR PRODUCTION FROM A QUALIFYING**  
 7                 **CLEAN COAL TECHNOLOGY UNIT.**

8         (a) CREDIT FOR PRODUCTION FROM A QUALIFYING  
 9     CLEAN COAL TECHNOLOGY UNIT.—Subpart D of part IV  
 10  of subchapter A of chapter 1 (relating to business related  
 11  credits), as amended by this Act, is amended by adding  
 12  at the end the following new section:

13     **“SEC. 45K. CREDIT FOR PRODUCTION FROM A QUALIFYING**  
 14                 **CLEAN COAL TECHNOLOGY UNIT.**

15         “(a) GENERAL RULE.—For purposes of section 38,  
 16  the qualifying clean coal technology production credit of  
 17  any taxpayer for any taxable year is equal to—

18             “(1) the applicable amount of clean coal tech-  
 19  nology production credit, multiplied by

20             “(2) the applicable percentage of the sum of—

21                 “(A) the kilowatt hours of electricity, plus

22                 “(B) each 3,413 Btu of fuels or chemicals,

23             produced by the taxpayer during such taxable

24             year at a qualifying clean coal technology unit,

25             but only if such production occurs during the

1           10-year period beginning on the date the unit  
2           was returned to service after becoming a quali-  
3           fying clean coal technology unit.

4           “(b) APPLICABLE AMOUNT.—

5           “(1) IN GENERAL.—For purposes of this sec-  
6           tion, the applicable amount of clean coal technology  
7           production credit is equal to \$0.0034.

8           “(2) INFLATION ADJUSTMENT.—For calendar  
9           years after 2005, the applicable amount of clean coal  
10          technology production credit shall be adjusted by  
11          multiplying such amount by the inflation adjustment  
12          factor for the calendar year in which the amount is  
13          applied. If any amount as increased under the pre-  
14          ceding sentence is not a multiple of 0.01 cent, such  
15          amount shall be rounded to the nearest multiple of  
16          0.01 cent.

17          “(c) APPLICABLE PERCENTAGE.—For purposes of  
18          this section, with respect to any qualifying clean coal tech-  
19          nology unit, the applicable percentage is the percentage  
20          equal to the ratio which the portion of the national mega-  
21          watt capacity limitation allocated to the taxpayer with re-  
22          spect to such unit under subsection (e) bears to the total  
23          megawatt capacity of such unit.

24          “(d) DEFINITIONS AND SPECIAL RULES.—For pur-  
25          poses of this section—

1           “(1) QUALIFYING CLEAN COAL TECHNOLOGY  
2           UNIT.—The term ‘qualifying clean coal technology  
3           unit’ means a clean coal technology unit of the tax-  
4           payer which—

5                   “(A) on January 1, 2005—

6                           “(i) was a coal-based electricity gener-  
7                           ating steam generator-turbine unit which  
8                           was not a clean coal technology unit, and

9                           “(ii) had a nameplate capacity rating  
10                          of not more than 300 megawatts,

11                          “(B) becomes a clean coal technology unit  
12                          as the result of the retrofitting, repowering, or  
13                          replacement of the unit with clean coal tech-  
14                          nology during the 10-year period beginning on  
15                          January 1, 2005,

16                          “(C) is not receiving nor is scheduled to  
17                          receive funding under the Clean Coal Tech-  
18                          nology Program, the Power Plant Improvement  
19                          Initiative, or the Clean Coal Power Initiative  
20                          administered by the Secretary of Energy, and

21                          “(D) receives an allocation of a portion of  
22                          the national megawatt capacity limitation under  
23                          subsection (e).

1           “(2) CLEAN COAL TECHNOLOGY UNIT.—The  
2           term ‘clean coal technology unit’ means a unit  
3           which—

4                   “(A) uses clean coal technology, including  
5                   advanced pulverized coal or atmospheric fluid-  
6                   ized bed combustion, pressurized fluidized bed  
7                   combustion, integrated gasification combined  
8                   cycle, or any other technology, for the produc-  
9                   tion of electricity,

10                   “(B) uses an input of at least 75 percent  
11                   coal to produce at least 50 percent of its ther-  
12                   mal output as electricity,

13                   “(C) has a design net heat rate of at least  
14                   500 less than that of such unit as described in  
15                   paragraph (1)(A),

16                   “(D) has a maximum design net heat rate  
17                   of not more than 9,500, and

18                   “(E) meets the pollution control require-  
19                   ments of paragraph (3).

20           “(3) POLLUTION CONTROL REQUIREMENTS.—

21                   “(A) IN GENERAL.—A unit meets the re-  
22                   quirements of this paragraph if—

23                           “(i) its emissions of sulfur dioxide, ni-  
24                           trogen oxide, or particulates meet the

1 lower of the emission levels for each such  
2 emission specified in—

3 “(I) subparagraph (B), or

4 “(II) the new source performance  
5 standards of the Clean Air Act (42  
6 U.S.C. 7411) which are in effect for  
7 the category of source at the time of  
8 the retrofitting, repowering, or re-  
9 placement of the unit, and

10 “(ii) its emissions do not exceed any  
11 relevant emission level specified by regula-  
12 tion pursuant to the hazardous air pollut-  
13 ant requirements of the Clean Air Act (42  
14 U.S.C. 7412) in effect at the time of the  
15 retrofitting, repowering, or replacement.

16 “(B) SPECIFIC LEVELS.—The levels speci-  
17 fied in this subparagraph are—

18 “(i) in the case of sulfur dioxide emis-  
19 sions, 50 percent of the sulfur dioxide  
20 emission levels specified in the new source  
21 performance standards of the Clean Air  
22 Act (42 U.S.C. 7411) in effect on the date  
23 of the enactment of this section for the  
24 category of source,



1 “(ii) in the case of nitrogen oxide  
2 emissions—

3 “(I) 0.1 pound per million Btu of  
4 heat input if the unit is not a cyclone-  
5 fired boiler, and

6 “(II) if the unit is a cyclone-fired  
7 boiler, 15 percent of the uncontrolled  
8 nitrogen oxide emissions from such  
9 boilers, and

10 “(iii) in the case of particulate emis-  
11 sions, 0.02 pound per million Btu of heat  
12 input.

13 “(4) DESIGN NET HEAT RATE.—The design net  
14 heat rate with respect to any unit, measured in Btu  
15 per kilowatt hour (HHV)—

16 “(A) shall be based on the design annual  
17 heat input to and the design annual net elec-  
18 trical power, fuels, and chemicals output from  
19 such unit (determined without regard to such  
20 unit’s co-generation of steam),

21 “(B) shall be adjusted for the heat content  
22 of the design coal to be used by the unit if it  
23 is less than 12,000 Btu per pound according to  
24 the following formula:

1       Design net heat rate = Unit net heat rate [1—  
 2       {((12,000-design coal heat content, Btu per pound)/  
 3       1,000) 0.013}],

4               “(C) shall be corrected for the site ref-  
 5       erence conditions of—

6               “(i) elevation above sea level of 500  
 7       feet,

8               “(ii) air pressure of 14.4 pounds per  
 9       square inch absolute (psia),

10              “(iii) temperature, dry bulb of 63°F,

11              “(iv) temperature, wet bulb of 54°F,

12              and

13              “(v) relative humidity of 55 percent,

14              and

15              “(D) if carbon capture controls have been  
 16       installed with respect to any qualifying unit and  
 17       such controls remove at least 50 percent of the  
 18       unit’s carbon dioxide emissions, shall be ad-  
 19       justed up to the design heat rate level which  
 20       would have resulted without the installation of  
 21       such controls.

22              “(5) HHV.—The term ‘HHV’ means higher  
 23       heating value.

1           “(6) APPLICATION OF CERTAIN RULES.—The  
2 rules of paragraphs (3), (4), and (5) of section 45(e)  
3 shall apply.

4           “(7) INFLATION ADJUSTMENT FACTOR.—

5           “(A) IN GENERAL.—The term ‘inflation  
6 adjustment factor’ means, with respect to a cal-  
7 endar year, a fraction the numerator of which  
8 is the GDP implicit price deflator for the pre-  
9 ceding calendar year and the denominator of  
10 which is the GDP implicit price deflator for the  
11 calendar year 2003.

12           “(B) GDP IMPLICIT PRICE DEFLATOR.—

13 The term ‘GDP implicit price deflator’ means,  
14 for any calendar year, the most recent revision  
15 of the implicit price deflator for the gross do-  
16 mestic product as of June 30 of such calendar  
17 year as computed by the Department of Com-  
18 merce before October 1 of such calendar year.

19           “(8) NONCOMPLIANCE WITH POLLUTION  
20 LAWS.—For purposes of this section, a unit which is  
21 not in compliance with the applicable State and Fed-  
22 eral pollution prevention, control, and permit re-  
23 quirements for any period of time shall not be con-  
24 sidered to be a qualifying clean coal technology unit  
25 during such period.

1       “(e) NATIONAL LIMITATION ON THE AGGREGATE CA-  
 2       PACITY OF QUALIFYING CLEAN COAL TECHNOLOGY  
 3       UNITS.—

4               “(1) IN GENERAL.—For purposes of this sec-  
 5       tion, the national megawatt capacity limitation for  
 6       qualifying clean coal technology units is 4,000  
 7       megawatts.

8               “(2) ALLOCATION OF LIMITATION.—The Sec-  
 9       retary shall allocate the national megawatt capacity  
 10      limitation for qualifying clean coal technology units  
 11      in such manner as the Secretary may prescribe  
 12      under the regulations under paragraph (3).

13              “(3) REGULATIONS.—Not later than 6 months  
 14      after the date of the enactment of this section, the  
 15      Secretary shall prescribe such regulations as may be  
 16      necessary or appropriate—

17                      “(A) to carry out the purposes of this sub-  
 18                      section,

19                      “(B) to limit the capacity of any qualifying  
 20                      clean coal technology unit to which this section  
 21                      applies so that the megawatt capacity allocated  
 22                      to any unit under this subsection does not ex-  
 23                      ceed 300 megawatts and the combined mega-  
 24                      watt capacity allocated to all such units when  
 25                      all such units are placed in service during the

1           10-year period described in subsection  
2           (d)(1)(B), does not exceed 4,000 megawatts,

3           “(C) to provide a certification process  
4           under which the Secretary, in consultation with  
5           the Secretary of Energy, shall approve and allo-  
6           cate the national megawatt capacity limita-  
7           tion—

8                   “(i) to encourage that units with the  
9                   highest thermal efficiencies, when adjusted  
10                  for the heat content of the design coal and  
11                  site reference conditions described in sub-  
12                  section (d)(4)(C), and environmental per-  
13                  formance, be placed in service as soon as  
14                  possible, and

15                  “(ii) to allocate capacity to taxpayers  
16                  which have a definite and credible plan for  
17                  placing into commercial operation a quali-  
18                  fying clean coal technology unit, includ-  
19                  ing—

20                          “(I) a site,

21                          “(II) contractual commitments  
22                          for procurement and construction or,  
23                          in the case of regulated utilities, the  
24                          agreement of the State utility commis-  
25                          sion,

1 “(III) filings for all necessary  
2 preconstruction approvals,

3 “(IV) a demonstrated record of  
4 having successfully completed com-  
5 parable projects on a timely basis, and

6 “(V) such other factors that the  
7 Secretary determines are appropriate,

8 “(D) to allocate the national megawatt ca-  
9 pacity limitation to a portion of the capacity of  
10 a qualifying clean coal technology unit if the  
11 Secretary determines that such an allocation  
12 would maximize the amount of efficient produc-  
13 tion encouraged with the available tax credits,

14 “(E) to set progress requirements and con-  
15 ditional approvals so that capacity allocations  
16 for clean coal technology units which become  
17 unlikely to meet the necessary conditions for  
18 qualifying can be reallocated by the Secretary  
19 to other clean coal technology units, and

20 “(F) to provide taxpayers with opportuni-  
21 ties to correct administrative errors and omis-  
22 sions with respect to allocations and record  
23 keeping within a reasonable period after dis-  
24 covery, taking into account the availability of

1 regulations and other administrative guidance  
2 from the Secretary.”.

3 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-  
4 tion 38(b) (relating to current year business credit), as  
5 amended by this Act, is amended by striking “plus” at  
6 the end of paragraph (19), by striking the period at the  
7 end of paragraph (20) and inserting “, plus”, and by add-  
8 ing at the end the following new paragraph:

9 “(21) the qualifying clean coal technology pro-  
10 duction credit determined under section 45K(a).”.

11 (c) CLERICAL AMENDMENT.—The table of sections  
12 for subpart D of part IV of subchapter A of chapter 1,  
13 as amended by this Act, is amended by adding at the end  
14 the following new item:

“Sec. 45K. Credit for production from a qualifying clean coal technology unit.”.

15 (d) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to production after December 31,  
17 2004, in taxable years ending after such date.

18 **PART II—INCENTIVES FOR EARLY COMMERCIAL**  
19 **APPLICATIONS OF ADVANCED CLEAN COAL**  
20 **TECHNOLOGIES**

21 **SEC. 212. CREDIT FOR INVESTMENT IN QUALIFYING AD-**  
22 **VANCED CLEAN COAL TECHNOLOGY.**

23 (a) ALLOWANCE OF QUALIFYING ADVANCED CLEAN  
24 COAL TECHNOLOGY UNIT CREDIT.—Section 46 (relating  
25 to amount of credit) is amended by striking “and” at the

1 end of paragraph (1), by striking the period at the end  
 2 of paragraph (2) and inserting “, and”, and by adding  
 3 at the end the following new paragraph:

4 “(3) the qualifying advanced clean coal tech-  
 5 nology unit credit.”.

6 (b) AMOUNT OF QUALIFYING ADVANCED CLEAN  
 7 COAL TECHNOLOGY UNIT CREDIT.—Subpart E of part  
 8 IV of subchapter A of chapter 1 (relating to rules for com-  
 9 puting investment credit) is amended by inserting after  
 10 section 48 the following new section:

11 **“SEC. 48A. QUALIFYING ADVANCED CLEAN COAL TECH-**  
 12 **NOLOGY UNIT CREDIT.**

13 “(a) IN GENERAL.—For purposes of section 46, the  
 14 qualifying advanced clean coal technology unit credit for  
 15 any taxable year is an amount equal to 10 percent of the  
 16 applicable percentage of the qualified investment in a  
 17 qualifying advanced clean coal technology unit for such  
 18 taxable year.

19 “(b) QUALIFYING ADVANCED CLEAN COAL TECH-  
 20 NOLOGY UNIT.—

21 “(1) IN GENERAL.—For purposes of subsection  
 22 (a), the term ‘qualifying advanced clean coal tech-  
 23 nology unit’ means an advanced clean coal tech-  
 24 nology unit of the taxpayer—



1           “(A)(i) in the case of a unit first placed in  
2           service after December 31, 2004, the original  
3           use of which commences with the taxpayer, or

4           “(ii) in the case of the retrofitting or  
5           repowering of a unit first placed in service be-  
6           fore January 1, 2005, the retrofitting or  
7           repowering of which is completed by the tax-  
8           payer after such date, or

9           “(B) which is depreciable under section  
10          167,

11          “(C) which has a useful life of not less  
12          than 4 years,

13          “(D) which is located in the United States,

14          “(E) which is not receiving nor is sched-  
15          uled to receive funding under the Clean Coal  
16          Technology Program, the Power Plant Improve-  
17          ment Initiative, or the Clean Coal Power Initia-  
18          tive administered by the Secretary of Energy,

19          “(F) which is not a qualifying clean coal  
20          technology unit, and

21          “(G) which receives an allocation of a por-  
22          tion of the national megawatt capacity limita-  
23          tion under subsection (f).

1           “(2) SPECIAL RULE FOR SALE-LEASEBACKS.—

2           For purposes of subparagraph (A) of paragraph (1),  
3           in the case of a unit which—

4                   “(A) is originally placed in service by a  
5                   person, and

6                   “(B) is sold and leased back by such per-  
7                   son, or is leased to such person, within 3  
8                   months after the date such unit was originally  
9                   placed in service, for a period of not less than  
10                  12 years, such unit shall be treated as originally  
11                  placed in service not earlier than the date on  
12                  which such unit is used under the leaseback (or  
13                  lease) referred to in subparagraph (B). The  
14                  preceding sentence shall not apply to any prop-  
15                  erty if the lessee and lessor of such property  
16                  make an election under this sentence. Such an  
17                  election, once made, may be revoked only with  
18                  the consent of the Secretary.

19           “(3) NONCOMPLIANCE WITH POLLUTION  
20           LAWS.—For purposes of this subsection, a unit  
21           which is not in compliance with the applicable State  
22           and Federal pollution prevention, control, and per-  
23           mit requirements for any period of time shall not be  
24           considered to be a qualifying advanced clean coal  
25           technology unit during such period.

1       “(c) APPLICABLE PERCENTAGE.—For purposes of  
 2 this section, with respect to any qualifying advanced clean  
 3 coal technology unit, the applicable percentage is the per-  
 4 centage equal to the ratio which the portion of the national  
 5 megawatt capacity limitation allocated to the taxpayer  
 6 with respect to such unit under subsection (f) bears to  
 7 the total megawatt capacity of such unit.

8       “(d) ADVANCED CLEAN COAL TECHNOLOGY UNIT.—  
 9 For purposes of this section—

10           “(1) IN GENERAL.—The term ‘advanced clean  
 11 coal technology unit’ means a new, retrofit, or  
 12 repowering unit of the taxpayer which—

13                   “(A) is—

14                           “(i) an eligible advanced pulverized  
 15 coal or atmospheric fluidized bed combus-  
 16 tion technology unit,

17                           “(ii) an eligible pressurized fluidized  
 18 bed combustion technology unit,

19                           “(iii) an eligible integrated gasifi-  
 20 cation combined cycle technology unit, or

21                           “(iv) an eligible other technology unit,  
 22 and

23                   “(B) meets the carbon emission rate re-  
 24 quirements of paragraph (6).

1           “(2) ELIGIBLE ADVANCED PULVERIZED COAL  
 2           OR ATMOSPHERIC FLUIDIZED BED COMBUSTION  
 3           TECHNOLOGY UNIT.—The term ‘eligible advanced  
 4           pulverized coal or atmospheric fluidized bed combus-  
 5           tion technology unit’ means a clean coal technology  
 6           unit using advanced pulverized coal or atmospheric  
 7           fluidized bed combustion technology which—

8                   “(A) is placed in service after December  
 9                   31, 2004, and before January 1, 2013, and

10                   “(B) has a design net heat rate of not  
 11                   more than 8,500 (8,900 in the case of units  
 12                   placed in service before 2009).

13           “(3) ELIGIBLE PRESSURIZED FLUIDIZED BED  
 14           COMBUSTION TECHNOLOGY UNIT.—The term ‘eligi-  
 15           ble pressurized fluidized bed combustion technology  
 16           unit’ means a clean coal technology unit using pres-  
 17           surized fluidized bed combustion technology which—

18                   “(A) is placed in service after December  
 19                   31, 2004, and before January 1, 2017, and

20                   “(B) has a design net heat rate of not  
 21                   more than 7,720 (8,900 in the case of units  
 22                   placed in service before 2009, and 8,500 in the  
 23                   case of units placed in service after 2008 and  
 24                   before 2013).

1           “(4) ELIGIBLE INTEGRATED GASIFICATION  
 2 COMBINED CYCLE TECHNOLOGY UNIT.—The term  
 3 ‘eligible integrated gasification combined cycle tech-  
 4 nology unit’ means a clean coal technology unit  
 5 using integrated gasification combined cycle tech-  
 6 nology, with or without fuel or chemical co-produc-  
 7 tion, which—

8           “(A) is placed in service after December  
 9 31, 2004, and before January 1, 2017,

10           “(B) has a design net heat rate of not  
 11 more than 7,720 (8,900 in the case of units  
 12 placed in service before 2009, and 8,500 in the  
 13 case of units placed in service after 2008 and  
 14 before 2013), and

15           “(C) has a net thermal efficiency (HHV)  
 16 using coal with fuel or chemical co-production  
 17 of not less than 44.2 percent (38.4 percent in  
 18 the case of units placed in service before 2009,  
 19 and 40.2 percent in the case of units placed in  
 20 service after 2008 and before 2013).

21           “(5) ELIGIBLE OTHER TECHNOLOGY UNIT.—  
 22 The term ‘eligible other technology unit’ means a  
 23 clean coal technology unit using any other tech-  
 24 nology for the production of electricity which is

placed in service after December 31, 2004, and before January 1, 2017.

“(6) CARBON EMISSION RATE REQUIREMENTS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), a unit meets the requirements of this paragraph if—

“(i) in the case of a unit using design coal with a heat content of not more than 9,000 Btu per pound, the carbon emission rate is less than 0.60 pound of carbon per kilowatt hour, and

“(ii) in the case of a unit using design coal with a heat content of more than 9,000 Btu per pound, the carbon emission rate is less than 0.54 pound of carbon per kilowatt hour.

“(B) ELIGIBLE OTHER TECHNOLOGY UNIT.—In the case of an eligible other technology unit, subparagraph (A) shall be applied by substituting ‘0.51’ and ‘0.459’ for ‘0.60’ and ‘0.54’, respectively.

“(e) GENERAL DEFINITIONS.—Any term used in this section which is also used in section 45K shall have the meaning given such term in section 45M.

1       “(f) NATIONAL LIMITATION ON THE AGGREGATE CA-  
 2       PACITY OF ADVANCED CLEAN COAL TECHNOLOGY  
 3       UNITS.—

4               “(1) IN GENERAL.—For purposes of subsection  
 5       (b)(1)(G), the national megawatt capacity limitation  
 6       is—

7               “(A) for qualifying advanced clean coal  
 8       technology units using advanced pulverized coal  
 9       or atmospheric fluidized bed combustion tech-  
 10      nology, not more than 1,000 megawatts (not  
 11      more than 500 megawatts in the case of units  
 12      placed in service before 2009),

13              “(B) for such units using pressurized flu-  
 14      idized bed combustion technology, not more  
 15      than 500 megawatts (not more than 250  
 16      megawatts in the case of units placed in service  
 17      before 2009),

18              “(C) for such units using integrated gasifi-  
 19      cation combined cycle technology, with or with-  
 20      out fuel or chemical co-production, not more  
 21      than 2,000 megawatts (not more than 1,000  
 22      megawatts in the case of units placed in service  
 23      before 2009), and

24              “(D) for such units using other technology  
 25      for the production of electricity, not more than

1           500 megawatts (not more than 250 megawatts  
2           in the case of units placed in service before  
3           2009).

4           “(2) ALLOCATION OF LIMITATION.—The Sec-  
5           retary shall allocate the national megawatt capacity  
6           limitation for qualifying advanced clean coal tech-  
7           nology units in such manner as the Secretary may  
8           prescribe under the regulations under paragraph (3).

9           “(3) REGULATIONS.—Not later than 6 months  
10          after the date of the enactment of this section, the  
11          Secretary shall prescribe such regulations as may be  
12          necessary or appropriate—

13                 “(A) to carry out the purposes of this sub-  
14                 section and section 45L,

15                 “(B) to limit the capacity of any qualifying  
16                 advanced clean coal technology unit to which  
17                 this section applies so that the combined mega-  
18                 watt capacity of all such units to which this sec-  
19                 tion applies does not exceed 4,000 megawatts,

20                 “(C) to provide a certification process de-  
21                 scribed in section 45K(e)(3)(C),

22                 “(D) to carry out the purposes described  
23                 in subparagraphs (D), (E), and (F) of section  
24                 45K(e)(3), and



1           “(E) to reallocate capacity which is not al-  
 2           located to any technology described in subpara-  
 3           graphs (A) through (D) of paragraph (1) be-  
 4           cause an insufficient number of qualifying units  
 5           request an allocation for such technology, to an-  
 6           other technology described in such subpara-  
 7           graphs in order to maximize the amount of en-  
 8           ergy efficient production encouraged with the  
 9           available tax credits.

10           “(4) SELECTION CRITERIA.—For purposes of  
 11           this subsection, the selection criteria for allocating  
 12           the national megawatt capacity limitation to quali-  
 13           fying advanced clean coal technology units—

14           “(A) shall be established by the Secretary  
 15           of Energy as part of a competitive solicitation,

16           “(B) shall include primary criteria of min-  
 17           imum design net heat rate, maximum design  
 18           thermal efficiency, environmental performance,  
 19           and lowest cost to the Government, and

20           “(C) shall include supplemental criteria as  
 21           determined appropriate by the Secretary of En-  
 22           ergy.

23           “(g) QUALIFIED INVESTMENT.—For purposes of  
 24           subsection (a), the term ‘qualified investment’ means, with  
 25           respect to any taxable year, the basis of a qualifying ad-

1 vanced clean coal technology unit placed in service by the  
 2 taxpayer during such taxable year (in the case of a unit  
 3 described in subsection (b)(1)(A)(ii), only that portion of  
 4 the basis of such unit which is properly attributable to  
 5 the retrofitting or repowering of such unit).

6 “(h) QUALIFIED PROGRESS EXPENDITURES.—

7 “(1) INCREASE IN QUALIFIED INVESTMENT.—

8 In the case of a taxpayer who has made an election  
 9 under paragraph (5), the amount of the qualified in-  
 10 vestment of such taxpayer for the taxable year (de-  
 11 termined under subsection (g) without regard to this  
 12 subsection) shall be increased by an amount equal to  
 13 the aggregate of each qualified progress expenditure  
 14 for the taxable year with respect to progress expend-  
 15 iture property.

16 “(2) PROGRESS EXPENDITURE PROPERTY DE-  
 17 FINED.—For purposes of this subsection, the term  
 18 ‘progress expenditure property’ means any property  
 19 being constructed by or for the taxpayer and which  
 20 it is reasonable to believe will qualify as a qualifying  
 21 advanced clean coal technology unit which is being  
 22 constructed by or for the taxpayer when it is placed  
 23 in service.

24 “(3) QUALIFIED PROGRESS EXPENDITURES DE-  
 25 FINED.—For purposes of this subsection—

1           “(A) SELF-CONSTRUCTED PROPERTY.—In  
 2           the case of any self-constructed property, the  
 3           term ‘qualified progress expenditures’ means  
 4           the amount which, for purposes of this subpart,  
 5           is properly chargeable (during such taxable  
 6           year) to capital account with respect to such  
 7           property.

8           “(B) NONSELF-CONSTRUCTED PROP-  
 9           ERTY.—In the case of nonself-constructed prop-  
 10          erty, the term ‘qualified progress expenditures’  
 11          means the amount paid during the taxable year  
 12          to another person for the construction of such  
 13          property.

14          “(4) OTHER DEFINITIONS.—For purposes of  
 15          this subsection—

16               “(A) SELF-CONSTRUCTED PROPERTY.—  
 17               The term ‘self-constructed property’ means  
 18               property for which it is reasonable to believe  
 19               that more than half of the construction expendi-  
 20               tures will be made directly by the taxpayer.

21               “(B) NONSELF-CONSTRUCTED PROP-  
 22               ERTY.—The term ‘nonself-constructed property’  
 23               means property which is not self-constructed  
 24               property.

1           “(C) CONSTRUCTION, ETC.—The term  
 2           ‘construction’ includes reconstruction and erec-  
 3           tion, and the term ‘constructed’ includes recon-  
 4           structed and erected.

5           “(D) ONLY CONSTRUCTION OF QUALI-  
 6           FYING ADVANCED CLEAN COAL TECHNOLOGY  
 7           UNIT TO BE TAKEN INTO ACCOUNT.—Construc-  
 8           tion shall be taken into account only if, for pur-  
 9           poses of this subpart, expenditures therefor are  
 10          properly chargeable to capital account with re-  
 11          spect to the property.

12          “(5) ELECTION.—An election under this sub-  
 13          section may be made at such time and in such man-  
 14          ner as the Secretary may by regulations prescribe.  
 15          Such an election shall apply to the taxable year for  
 16          which made and to all subsequent taxable years.  
 17          Such an election, once made, may not be revoked ex-  
 18          cept with the consent of the Secretary.

19          “(i) COORDINATION WITH OTHER CREDITS.—This  
 20          section shall not apply to any property with respect to  
 21          which the rehabilitation credit under section 47 or the en-  
 22          ergy credit under section 48 is allowed unless the taxpayer  
 23          elects to waive the application of such credit to such prop-  
 24          erty.”.

1       (c) RECAPTURE.—Section 50(a) (relating to other  
2 special rules) is amended by adding at the end the fol-  
3 lowing new paragraph:

4               “(6) SPECIAL RULES RELATING TO QUALIFYING  
5       ADVANCED CLEAN COAL TECHNOLOGY UNIT.—For  
6       purposes of applying this subsection in the case of  
7       any credit allowable by reason of section 48A, the  
8       following rules shall apply:

9               “(A) GENERAL RULE.—In lieu of the  
10       amount of the increase in tax under paragraph  
11       (1), the increase in tax shall be an amount  
12       equal to the investment tax credit allowed under  
13       section 38 for all prior taxable years with re-  
14       spect to a qualifying advanced clean coal tech-  
15       nology unit (as defined by section 48A(b)(1))  
16       multiplied by a fraction the numerator of which  
17       is the number of years remaining to fully depre-  
18       ciate under this title the qualifying advanced  
19       clean coal technology unit disposed of, and the  
20       denominator of which is the total number of  
21       years over which such unit would otherwise  
22       have been subject to depreciation. For purposes  
23       of the preceding sentence, the year of disposi-  
24       tion of the qualifying advanced clean coal tech-

nology unit shall be treated as a year of remaining depreciation.

“(B) PROPERTY CEASES TO QUALIFY FOR PROGRESS EXPENDITURES.—Rules similar to the rules of paragraph (2) shall apply in the case of qualified progress expenditures for a qualifying advanced clean coal technology unit under section 48A, except that the amount of the increase in tax under subparagraph (A) of this paragraph shall be substituted for the amount described in such paragraph (2).

“(C) APPLICATION OF PARAGRAPH.—This paragraph shall be applied separately with respect to the credit allowed under section 38 regarding a qualifying advanced clean coal technology unit.”.

(d) TECHNICAL AMENDMENTS.—

(1) Section 49(a)(1)(C) is amended by striking “and” at the end of clause (ii), by striking the period at the end of clause (iii) and inserting “, and”, and by adding at the end the following new clause:

“(iv) the portion of the basis of any qualifying advanced clean coal technology unit attributable to any qualified investment (as defined by section 48A(g)).”.

“(6) NONAPPLICATION.—Paragraphs (1) and (2) shall not apply to any qualifying advanced clean coal technology unit credit under section 48A.”.

“Sec. 48A. Qualifying advanced clean coal technology unit credit.”.

18 SEC. 213. CREDIT FOR PRODUCTION FROM A QUALIFYING  
19 ADVANCED CLEAN COAL TECHNOLOGY UNIT.

**•S 387 IS**

1 **“SEC. 45L. CREDIT FOR PRODUCTION FROM A QUALIFYING**  
 2 **ADVANCED CLEAN COAL TECHNOLOGY UNIT.**

3 “(a) GENERAL RULE.—For purposes of section 38,  
 4 the qualifying advanced clean coal technology production  
 5 credit of any taxpayer for any taxable year is equal to—

6 “(1) the applicable amount of advanced clean  
 7 coal technology production credit, multiplied by

8 “(2) the applicable percentage (as determined  
 9 under section 48A(c)) of the sum of—

10 “(A) the kilowatt hours of electricity, plus

11 “(B) each 3,413 Btu of fuels or chemicals,  
 12 produced by the taxpayer during such taxable  
 13 year at a qualifying advanced clean coal tech-  
 14 nology unit, but only if such production occurs  
 15 during the 10-year period beginning on the date  
 16 the unit was originally placed in service (or re-  
 17 turned to service after becoming a qualifying  
 18 advanced clean coal technology unit).

19 “(b) APPLICABLE AMOUNT.—For purposes of this  
 20 section—

21 “(1) IN GENERAL.—Except as provided in para-  
 22 graph (2), the applicable amount of advanced clean  
 23 coal technology production credit with respect to  
 24 production from a qualifying advanced clean coal  
 25 technology unit shall be determined as follows:



1 “(A) If the qualifying advanced clean coal  
2 technology unit is producing electricity only:

3 “(i) In the case of a unit originally  
4 placed in service before 2009, if—

“The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 8,500 .....	\$.0060	\$.0038
More than 8,500 but not more than 8,750 .....	\$.0025	\$.0010
More than 8,750 but less than 8,900 .....	\$.0010	\$.0010.

5 “(ii) In the case of a unit originally  
6 placed in service after 2008 and before  
7 2013, if—

“The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 7,770 .....	\$.0105	\$.0090
More than 7,770 but not more than 8,125 .....	\$.0085	\$.0068
More than 8,125 but less than 8,500 .....	\$.0075	\$.0055.

8 “(iii) In the case of a unit originally  
9 placed in service after 2012 and before  
10 2017, if—

“The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 7,380 .....	\$.0140	\$.0115
More than 7,380 but not more than 7,720 .....	\$.0120	\$.0090.

11 “(B) If the qualifying advanced clean coal  
12 technology unit is producing fuel or chemicals:

13 “(i) In the case of a unit originally  
14 placed in service before 2009, if—

“The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 40.2 percent .....	\$.0060	\$.0038
Less than 40.2 but not less than 39 percent .....	\$.0025	\$.0010
Less than 39 but not less than 38.4 percent .....	\$.0010	\$.0010.

1 “(ii) In the case of a unit originally  
2 placed in service after 2008 and before  
3 2013, if—

“The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 43.9 percent .....	\$.0105	\$.0090
Less than 43.9 but not less than 42 percent .....	\$.0085	\$.0068
Less than 42 but not less than 40.2 percent .....	\$.0075	\$.0055.

4 “(iii) In the case of a unit originally  
5 placed in service after 2012 and before  
6 2017, if—

“The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 46.3 percent .....	\$.0140	\$.0115
Less than 46.3 but not less than 44.2 percent .....	\$.0120	\$.0090.

7 “(2) SPECIAL RULE FOR UNITS QUALIFYING  
8 FOR GREATER APPLICABLE AMOUNT WHEN PLACED  
9 IN SERVICE.—If, at the time a qualifying advanced  
10 clean coal technology unit is placed in service, pro-  
11 duction from the unit would be entitled to a greater  
12 applicable amount if such unit had been placed in  
13 service at a later date, the applicable amount for  
14 such unit shall be such greater amount.

1       “(c) INFLATION ADJUSTMENT.—For calendar years  
 2 after 2005, each dollar amount in subsection (b)(1) shall  
 3 be adjusted by multiplying such amount by the inflation  
 4 adjustment factor for the calendar year in which the  
 5 amount is applied. If any amount as increased under the  
 6 preceding sentence is not a multiple of 0.01 cent, such  
 7 amount shall be rounded to the nearest multiple of 0.01  
 8 cent.

9       “(d) DEFINITIONS AND SPECIAL RULES.—For pur-  
 10 poses of this section—

11           “(1) IN GENERAL.—Any term used in this sec-  
 12 tion which is also used in section 45K or 48A shall  
 13 have the meaning given such term in such section.

14           “(2) APPLICABLE RULES.—The rules of para-  
 15 graphs (3), (4), and (5) of section 45(e) shall  
 16 apply.”.

17       (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-  
 18 tion 38(b) (relating to current year business credit), as  
 19 amended by this Act, is amended by striking “plus” at  
 20 the end of paragraph (20), by striking the period at the  
 21 end of paragraph (21) and inserting “, plus”, and by add-  
 22 ing at the end the following new paragraph:

23           “(22) the qualifying advanced clean coal tech-  
 24 nology production credit determined under section  
 25 45L(a).”.

1 (c) DENIAL OF DOUBLE BENEFIT.—Section 29(d)  
 2 (relating to other definitions and special rules) is amended  
 3 by adding at the end the following new paragraph:

4 “(9) DENIAL OF DOUBLE BENEFIT.—This sec-  
 5 tion shall not apply with respect to any qualified fuel  
 6 the production of which may be taken into account  
 7 for purposes of determining the credit under section  
 8 45L.”.

9 (d) CLERICAL AMENDMENT.—The table of sections  
 10 for subpart D of part IV of subchapter A of chapter 1,  
 11 as amended by this Act, is amended by adding at the end  
 12 the following new item:

“Sec. 45L. Credit for production from a qualifying advanced clean coal tech-  
 nology unit.”.

13 (e) EFFECTIVE DATE.—The amendments made by  
 14 this section shall apply to production after December 31,  
 15 2004, in taxable years ending after such date.

16 **PART III—TREATMENT OF PERSONS NOT ABLE**  
 17 **TO USE ENTIRE CREDIT**

18 **SEC. 214. TREATMENT OF PERSONS NOT ABLE TO USE EN-**  
 19 **TIRE CREDIT.**

20 (a) IN GENERAL.—Section 45K, as added by this  
 21 Act, is amended by adding at the end the following new  
 22 subsection:

23 “(f) TREATMENT OF PERSON NOT ABLE TO USE EN-  
 24 TIRE CREDIT.—

1 “(1) ALLOWANCE OF CREDITS.—

2 “(A) IN GENERAL.—Any credit allowable  
3 under this section, section 45L, or section 48A  
4 with respect to a facility owned by a person de-  
5 scribed in subparagraph (B) may be transferred  
6 or used as provided in this subsection, and the  
7 determination as to whether the credit is allow-  
8 able shall be made without regard to the tax-  
9 exempt status of the person.

10 “(B) PERSONS DESCRIBED.—A person is  
11 described in this subparagraph if the person  
12 is—

13 “(i) an organization described in sec-  
14 tion 501(c)(12)(C) and exempt from tax  
15 under section 501(a),

16 “(ii) an organization described in sec-  
17 tion 1381(a)(2)(C),

18 “(iii) a public utility (as defined in  
19 section 136(c)(2)(B)),

20 “(iv) any State or political subdivision  
21 thereof, the District of Columbia, or any  
22 agency or instrumentality of any of the  
23 foregoing,

1 “(v) any Indian tribal government  
 2 (within the meaning of section 7871) or  
 3 any agency or instrumentality thereof, or

4 “(vi) the Tennessee Valley Authority.

5 “(2) TRANSFER OF CREDIT.—

6 “(A) IN GENERAL.—A person described in  
 7 clause (i), (ii), (iii), (iv), or (v) of paragraph  
 8 (1)(B) may transfer any credit to which para-  
 9 graph (1)(A) applies through an assignment to  
 10 any other person not described in paragraph  
 11 (1)(B). Such transfer may be revoked only with  
 12 the consent of the Secretary.

13 “(B) REGULATIONS.—The Secretary shall  
 14 prescribe such regulations as necessary to en-  
 15 sure that any credit described in subparagraph  
 16 (A) is claimed once and not reassigned by such  
 17 other person.

18 “(C) TRANSFER PROCEEDS TREATED AS  
 19 ARISING FROM ESSENTIAL GOVERNMENT FUNC-  
 20 TION.—Any proceeds derived by a person de-  
 21 scribed in clause (iii), (iv), or (v) of paragraph  
 22 (1)(B) from the transfer of any credit under  
 23 subparagraph (A) shall be treated as arising  
 24 from the exercise of an essential government  
 25 function.

1           “(3) USE OF CREDIT AS AN OFFSET.—Notwith-  
 2           standing any other provision of law, in the case of  
 3           a person described in clause (i), (ii), or (v) of para-  
 4           graph (1)(B), any credit to which paragraph (1)(A)  
 5           applies may be applied by such person, to the extent  
 6           provided by the Secretary of Agriculture, as a pre-  
 7           payment of any loan, debt, or other obligation the  
 8           entity has incurred under subchapter I of chapter 31  
 9           of title 7 of the Rural Electrification Act of 1936 (7  
 10          U.S.C. 901 et seq.), as in effect on the date of the  
 11          enactment of this section.

12           “(4) USE BY TVA.—

13           “(A) IN GENERAL.—Notwithstanding any  
 14           other provision of law, in the case of a person  
 15           described in paragraph (1)(B)(vi), any credit to  
 16           which paragraph (1)(A) applies may be applied  
 17           as a credit against the payments required to be  
 18           made in any fiscal year under section 15d(e) of  
 19           the Tennessee Valley Authority Act of 1933 (16  
 20           U.S.C. 831n–4(e)) as an annual return on the  
 21           appropriations investment and an annual repay-  
 22           ment sum.

23           “(B) TREATMENT OF CREDITS.—The ag-  
 24           gregate amount of credits described in para-  
 25           graph (1)(A) with respect to such person shall

1 be treated in the same manner and to the same  
 2 extent as if such credits were a payment in cash  
 3 and shall be applied first against the annual re-  
 4 turn on the appropriations investment.

5 “(C) CREDIT CARRYOVER.—With respect  
 6 to any fiscal year, if the aggregate amount of  
 7 credits described paragraph (1)(A) with respect  
 8 to such person exceeds the aggregate amount of  
 9 payment obligations described in subparagraph  
 10 (A), the excess amount shall remain available  
 11 for application as credits against the amounts  
 12 of such payment obligations in succeeding fiscal  
 13 years in the same manner as described in this  
 14 paragraph.

15 “(5) CREDIT NOT INCOME.—Any transfer  
 16 under paragraph (2) or use under paragraph (3) of  
 17 any credit to which paragraph (1)(A) applies shall  
 18 not be treated as income for purposes of section  
 19 501(c)(12).

20 “(6) TREATMENT OF UNRELATED PERSONS.—  
 21 For purposes of this subsection, transfers among  
 22 and between persons described in clauses (i), (ii),  
 23 (iii), (iv), and (v) of paragraph (1)(B) shall be treat-  
 24 ed as transfers between unrelated parties.”.



1 (b) EFFECTIVE DATE.—The amendment made by  
 2 this section shall apply to production after December 31,  
 3 2004, in taxable years ending after such date.

## 4 **Subtitle C—Nuclear Power**

### 5 **SEC. 221. CREDIT FOR PRODUCTION FROM ADVANCED NU-** 6 **CLEAR POWER FACILITIES.**

7 (a) IN GENERAL.—Subpart D of part IV of sub-  
 8 chapter A of chapter 1 (relating to business related cred-  
 9 its), as amended by this Act, is amended by adding at  
 10 the end the following new section:

#### 11 **“SEC. 45M. CREDIT FOR PRODUCTION FROM ADVANCED** 12 **NUCLEAR POWER FACILITIES.**

13 “(a) GENERAL RULE.—For purposes of section 38,  
 14 the advanced nuclear power facility production credit of  
 15 any taxpayer for any taxable year is equal to the product  
 16 of—

17 “(1) 1.8 cents, multiplied by

18 “(2) the kilowatt hours of electricity—

19 “(A) produced by the taxpayer at an ad-  
 20 vanced nuclear power facility during the 8-year  
 21 period beginning on the date the facility was  
 22 originally placed in service, and

23 “(B) sold by the taxpayer to an unrelated  
 24 person during the taxable year.

25 “(b) NATIONAL LIMITATION.—

1           “(1) IN GENERAL.—The amount of credit  
2           which would (but for this subsection and subsection  
3           (c)) be allowed with respect to any facility for any  
4           taxable year shall not exceed the amount which  
5           bears the same ratio to such amount of credit as—

6                   “(A) the national megawatt capacity limi-  
7                   tation allocated to the facility, bears to

8                   “(B) the total megawatt nameplate capac-  
9                   ity of such facility.

10           “(2) AMOUNT OF NATIONAL LIMITATION.—The  
11           national megawatt capacity limitation shall be 6,000  
12           megawatts.

13           “(3) ALLOCATION OF LIMITATION.—The Sec-  
14           retary shall allocate the national megawatt capacity  
15           limitation in such manner as the Secretary may pre-  
16           scribe.

17           “(4) REGULATIONS.—Not later than 6 months  
18           after the date of the enactment of this section, the  
19           Secretary shall prescribe such regulations as may be  
20           necessary or appropriate to carry out the purposes  
21           of this subsection. Such regulations shall provide a  
22           certification process under which the Secretary, after  
23           consultation with the Secretary of Energy, shall ap-  
24           prove and allocate the national megawatt capacity  
25           limitation.

1 “(c) OTHER LIMITATIONS.—

2 “(1) ANNUAL LIMITATION.—The amount of the  
3 credit allowable under subsection (a) (after the ap-  
4 plication of subsection (b)) for any taxable year with  
5 respect to any facility shall not exceed an amount  
6 which bears the same ratio to \$125,000,000 as—

7 “(A) the national megawatt capacity limi-  
8 tation allocated under subsection (b) to the fa-  
9 cility, bears to

10 “(B) 1000.

11 “(2) OTHER LIMITATIONS.—Rules similar to  
12 the rules of section 45(b) shall apply for purposes of  
13 this section, except that paragraph (2) thereof shall  
14 not apply to the 1.8 cents under subsection (a)(1).

15 “(d) ADVANCED NUCLEAR POWER FACILITY.—For  
16 purposes of this section—

17 “(1) IN GENERAL.—The term ‘advanced nu-  
18 clear power facility’ means any advanced nuclear fa-  
19 cility—

20 “(A) which is owned by the taxpayer and  
21 which uses nuclear energy to produce elec-  
22 tricity, and

23 “(B) which is originally placed in service  
24 after the date of the enactment of this para-  
25 graph and before January 1, 2021.

1           “(2) ADVANCED NUCLEAR FACILITY.—For pur-  
 2           poses of paragraph (1), the term ‘advanced nuclear  
 3           facility’ means any nuclear facility the reactor design  
 4           for which is approved after the date of the enact-  
 5           ment of this paragraph by the Nuclear Regulatory  
 6           Commission (and such design or a substantially  
 7           similar design of comparable capacity was not ap-  
 8           proved on or before such date).

9           “(e) OTHER RULES TO APPLY.—Rules similar to the  
 10          rules of paragraphs (1), (2), (3), (4), and (5) of section  
 11          45(e) shall apply for purposes of this section.”

12          (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-  
 13          tion 38(b), as amended by this Act, is amended by striking  
 14          “plus” at the end of paragraph (21), by striking the period  
 15          at the end of paragraph (22) and inserting “, plus”, and  
 16          by adding at the end the following:

17                 “(23) the advanced nuclear power facility pro-  
 18                 duction credit determined under section 45M(a).”.

19          (c) CLERICAL AMENDMENT.—The table of sections  
 20          for subpart D of part IV of subchapter A of chapter 1,  
 21          as amended by this Act, is amended by adding at the end  
 22          the following:

                  “Sec. 45M. Credit for production from advanced nuclear power facilities.”.

23          (d) EFFECTIVE DATE.—The amendments made by  
 24          this section shall apply to production in taxable years be-  
 25          ginning after December 31, 2004.

## Subtitle D—Sunset

### SEC. 231. SUNSET.

(a) IN GENERAL.—All provisions of, and amendments made by, this title shall not apply to taxable years beginning after December 31, 2010.

(b) APPLICATION OF CERTAIN LAWS.—The Internal Revenue Code of 1986 shall be applied and administered to taxable years beginning after December 31, 2010, as if the provisions and amendments described in subsection (a) had never been enacted.

## TITLE III—RESEARCH CREDITS

### SEC. 301. SENSE OF THE SENATE REGARDING PERMANENT EXTENSION OF RESEARCH CREDIT.

It is the sense of the Senate that the income tax credit for increasing research activities under section 41 of the Internal Revenue Code of 1986 should be permanently extended, the rates of the alternative incremental credit under such section should be increased, and an alternative simplified credit for qualified research expenses should be instituted.

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